

F. PROCEDURAL MATTERS**§43. Generally; Point of Order and Debate Thereon**

The Chair will not ordinarily apply the rule of germaneness to bar an amendment unless a point of order is actually raised against the amendment. A nongermane amendment so permitted to remain may be further amended by amendments germane thereto. Similarly, where an amendment to a general appropriation bill proposes a change in existing law but is permitted to remain because no point of order is raised against it, the amendment may be perfected by germane amendments which do not add further legislation.⁽¹⁷⁾ Of course, the fact that no point of order was made against a particular amendment does not waive points of order against subsequent amendments of a related nature.⁽¹⁸⁾

In the ordinary case, a point of order based on the rule of germaneness will state the grounds for asserting the nongermaneness of the amendment. The Chair may sustain the point of order but rely for his ruling upon a different basis from that urged by the proponent of the point of order. In one instance, in fact, an amend-

ment was ruled out as not germane where the point of order raised against it was based on the contention that it was 'legislation on an appropriation bill.'⁽¹⁹⁾ But the Chair has not upheld points of order that were not clearly based on specific rules of the House.⁽²⁰⁾

If any part of an amendment is subject to a point of order, the entire amendment is subject to such point of order.⁽¹⁾ Thus, if one part of the amendment is deficient, the whole amendment is ruled out.⁽²⁾

The effect of a ruling by the Chair that an amendment is not germane is usually that the amendment is barred in its present form and at the place at which it is offered. Of course, the ruling of the Chair may be appealed, in which case the question is on the propriety of the Chair's ruling, and not on the substantive merits of the amendment.⁽³⁾ And on one occasion, the Committee of the Whole by unanimous consent voted upon an amendment that had been ruled out of order as not germane.⁽⁴⁾ Similarly, an amend-

17. See §15.49, *supra*.

18. See §13.19, *supra*.

19. See §3.4, *supra*.

20. See §43.7, *infra*.

1. See §5.8, 8.29, *supra*.

2. See §4.95, *supra*.

3. See, for example, §41.10, *supra*.

4. See 97 CONG. REC. 3781, 82d Cong. 1st Sess., Apr. 12, 1951.

ment ruled out as not germane to that part of an appropriation bill to which offered has been permitted by unanimous consent to be offered to a previous paragraph to which it was germane but which had been passed in the reading.⁽⁵⁾

The fact that an amendment has been ruled out as not germane does not preclude amendments of a similar nature from being subsequently offered. Thus, an amendment of different form although of similar effect as one previously rejected is admissible if redrafted to be germane. It has been held that similarity of an amendment to one previously rejected will not render it inadmissible if sufficiently different in form to present another proposition.⁽⁶⁾

Where a motion to recommit with instructions is ruled out on a point of order because containing matter not germane to the bill, another motion to recommit may be offered.⁽⁷⁾

When a point of order is made, the Chair ordinarily permits de-

bate thereon, consisting usually of a statement by the person making the point of order in support of his position, a statement by the proponent of the amendment in defense of the germaneness of the amendment, and arguments by any others who wish to speak on either side of the issue. Debate on a point of order is within the discretion of the Chair,⁽⁸⁾ and Members recognized on the point of order do not yield to others to debate the germaneness of an amendment.⁽⁹⁾

The burden of proof of the germaneness of an amendment rests upon the proponent.⁽¹⁰⁾

Debate on a point of order against an amendment is limited to the question of order and must be relevant thereto and may not go to the merits of the amendment.⁽¹¹⁾ On the other hand, if a point of order is reserved against

5. See § 18.14, *supra*.

6. See, for example, the ruling of Chairman Aime J. Forand (R.I.) at 103 CONG. REC. 9365, 85th Cong. 1st Sess., June 17, 1957, with respect to a point of order raised by Mr. Kenneth B. Keating (N.Y.).

7. See § 23.3, *supra*.

8. See § 42.37, *supra*.

9. See, for example, the proceedings of Nov. 14, 1980, relating to S. 885, the Pacific Electric Power Planning and Conservation Act of 1980, discussed in § 31.1, *supra*.

On occasion, a Member recognized to debate a point of order has been permitted to yield to other Members speaking in support of his argument. See, for example, 113 CONG. REC. 28649-51, 90th Cong. 1st Sess., Oct. 11, 1967.

10. See §§ 35.31, 41.8, *supra*.

11. See §§ 3.31, 35.101, *supra*.

an amendment, the proponent may speak on the merits of the amendment and respond subsequently to the point of order.⁽¹²⁾

The Chairman, of course, may decline to hear further debate with regard to a point of order on which he has ruled.⁽¹³⁾ But the Chair, after sustaining a point of order against an amendment, has on occasion permitted a Member to state his position on the germaneness of the amendment.⁽¹⁴⁾

Under clauses 4 and 5 of Rule XXVIII, the Speaker must first hear argument on and rule on a point of order that an identifiable portion of a Senate provision is not germane to the House provision to which it is attached. Decisions on such points of order are governed by the same procedures discussed under this heading. Once the Speaker rules a Senate provision nongermane, a motion, of high privilege, may be entertained that the House reject the nongermane matter. Debate and disposition of the conference report then proceed as specified in Rule XXVIII. Debate on a motion to reject a nongermane portion of a conference report under Rule XXVIII clause 4 is discussed briefly in §26, *supra*. For more com-

prehensive discussion of House-Senate relations, see Chapter 32, *infra*; and see Chapter 33, *infra*, for discussion of House-Senate conferences.

Amendment to Nongermane Amendment

§ 43.1 If the time for making a point of order against an amendment has elapsed, such amendment, even though not itself germane, is open to germane amendments.⁽¹⁵⁾

Entire Amendment Ruled Out

§ 43.2 If a point of order is sustained against an amendment, the entire amendment is ruled out even though only a portion of the amendment be improper.

In the 84th Congress, a bill⁽¹⁶⁾ was under consideration to amend

12. See § 31.30, *supra*.

13. See § 31.32, *supra*.

14. See § 37.1, *supra*.

15. See, for example, the ruling of Chairman Hale Boggs (La.), at 95 CONG. REC. 8381, 81st Cong. 1st Sess., June 24, 1949, on a point of order raised by Mr. Multer against a substitute for an amendment under consideration. Since no timely objection had been raised against the amendment for which the substitute was offered, and since the substitute was germane to the amendment, the point of order was overruled.

16. S. 2090 (Committee on Foreign Affairs).

the Mutual Security Act of 1954. The bill, which had been reported from the Committee on Foreign Affairs, provided for aid to foreign countries. A committee amendment was offered which related to exemption from duty of personal and household effects brought into the United States pursuant to government orders. The subject matter of the proposed amendment was thus within the jurisdiction of the Committee on Ways and Means. Mr. Wilbur D. Mills, of Arkansas, made the point of order that the amendment was not germane to the bill.⁽¹⁷⁾ The point of order having been conceded, the Chairman⁽¹⁸⁾ stated:

The point of order is conceded and the point of order sustained. A point of order to a part of an amendment makes the whole amendment subject to a point of order, so the whole amendment goes out on the point of order.

Amendment, Ruled Out as Not Germane, Permitted To Be Offered to a Different Paragraph

§ 43.3 An amendment, held to be not germane to that part of an appropriation bill to which offered, has been per-

17. 101 CONG. REC. 9662, 84th Cong. 1st Sess., June 30, 1955.

18. Jere Cooper (Tenn.).

mitted by unanimous consent to be offered to a previous paragraph to which it was germane but which had been passed in reading for amendment.⁽¹⁹⁾

Amendment, Ruled Out as Not Germane, Considered by Unanimous Consent

§ 43.4 On occasion, an amendment that has been ruled out as not germane has been considered by unanimous consent.

On Apr. 12, 1951, during consideration of S. 1-1951, a bill amending the Universal Military Training and Service Act, an amendment relating to the voting rights of persons within the scope of the bill was ruled out as not germane, but was considered pursuant to a unanimous consent request. The proceedings are discussed in § 4.41, *supra*.

Burden of Proof

§ 43.5 The burden of proof is on the proponent of an amendment to establish its germaneness, and where the proponent admits to an interpretation which will render it nongermane, the

19. See § 18.14, *supra*.

Chair will rule it out of order.

The proceedings of Dec. 11, 1979, relating to H.R. 4962 (the Child Health Assurance Act of 1979) are discussed in §9.26, *supra*.

§ 43.6 The burden of proof is on the proponent of an amendment to establish its germaneness, and where an amendment is equally susceptible to more than one interpretation, one of which will render it not germane, the Chair will rule it out of order.

The proceedings of June 20, 1975, relating to H.R. 3474, the Energy Research and Development Administration authorization for fiscal 1976, are discussed in §9.41, *supra*.

Point of Order Not Specifically Based on Rule of House

§ 43.7 The Chair will not interpret a point of order against a substitute as “narrowing the scope” of a pending amendment to be a point of order under a specific rule of the House upon which he must rule, in the absence of some reference to the germaneness rule or other rule which is stated or nec-

essarily implied in the point of order.

On June 25, 1987,⁽²⁰⁾ the Committee of the Whole had under consideration H.R. 2712, Department of the Interior appropriations for fiscal 1988. An amendment was pending which sought to reduce all discretionary accounts in the general appropriation bill by a specified percentage. A point of order that a substitute “narrowed the scope” of the pending amendment by addressing only the availability of one account in the bill was held not to constitute a valid point of order under the rules of the House. The proceedings were as follows:

MR. [FREDERICK S.] UPTON [of Michigan]: Mr. Chairman, I offer an amendment, and I ask unanimous consent that the amendment be considered as read and printed in the Record.

THE CHAIRMAN: Is there objection to the request of the gentleman from Michigan?

There was no objection.

The text of the amendment is as follows:

Amendment offered by Mr. Upton: Page 77, after line 10, insert the following new section:

Sec. 314. Notwithstanding any other provision of this Act, each amount appropriated or otherwise made available by this Act that is not required to be appropriated or

20. 133 CONG. REC. 17403, 17414, 17415, 100th Cong. 1st Sess.

otherwise made available by a provision of law is reduced by 3.2 percent.

MR. [SIDNEY R.] YATES [of Illinois]: Mr. Chairman, I offer an amendment as a substitute for the amendment.

The Clerk read as follows:

Amendment offered by Mr. Yates as a substitute for the amendment offered by Mr. Upton: On page 52, line 25, after "expended", insert "of which \$50,000,000 shall not be obligated unless future fiscal year 1988 pay cost increases for accounts in this Act are provided within the allocations of the fiscal year 1988 Congressional Budget Resolution". . . .

MR. [STEVEN C.] GUNDERSON [of Wisconsin]: Mr. Chairman, I raise the point of order that the substitute amendment significantly narrows the scope of the amendment now before the House and therefore is out of order.

THE CHAIRMAN:⁽¹⁾ The Chair would advise the gentleman that he does not state a proper point of order; so the point of order is not sustained.

Section in Committee Amendment Not Within Jurisdiction of Committee

§ 43.8 The point of order that a section in a committee amendment in the nature of a substitute was not within the jurisdiction of that committee does not lie when that section is read for amendment, where no question of germaneness is presented.

1. Frederick C. Boucher (Va.).

During consideration of H.R. 15560 (a bill concerning emergency loans to livestock producers) in the Committee of the Whole, the Chair held that a point of order against the pending section was not in order. The proceedings of July 16, 1974,⁽²⁾ were as follows:

THE CHAIRMAN:⁽³⁾ The Clerk will read.

The Clerk read as follows:

Sec. 4. Loans guaranteed under this Act shall be secured by security adequate to protect the Government's interests, as determined by the Secretary.

Sec. 5. Loan guarantees outstanding under this Act shall not exceed \$2,000,000,000 at any one time. Subject to the provisions of section 2(c) of this Act, the fund created in section 309 of the Consolidated Farm and Rural Development Act shall be used by the Secretary for the discharge of the obligations of the Secretary under contracts of guarantee made pursuant to this Act.

Sec. 6. Contracts of guarantee under this Act shall not be included in the totals of the budget of the United States Government and shall be exempt from any general limitation imposed by statute on expenditures and net lending (budget outlays) of the United States. . . .

MR. [CHARLES A.] VANIK [of Ohio]: Mr. Chairman, I make a point of order against section 6. The language in section 6 removes any expenditures under this act from the debt ceiling of the United States. My point of order is

2. 120 CONG. REC. 23344, 93d Cong. 2d Sess.

3. Lloyd Meeds (Wash.).

based on the point that this language constitutes an appropriation in a legislative bill, and second, invades the jurisdiction of another committee which has jurisdiction under the rules of this House, and with respect to those items it should be included in the debt ceiling.

THE CHAIRMAN: The Chair is ready to rule.

The Chair would state to the gentleman, as to the argument with respect to committee jurisdiction, that the provisions of section 6 of the committee substitute are also continued in section 7 of the original bill, and the point of order of germaneness is not in order. Section 6, while it provides that guarantees shall not be included in budget totals and shall be exempt from limitations on net lending, does not appropriate funds and does not violate clause 4 of rule XXI. The points of order are overruled.

Does the gentleman wish to be heard further?

MR. VANIK: Mr. Chairman, what about the second point that I made, that this is not within the jurisdiction of the Committee on Agriculture, to determine what should go into the debt ceiling?

THE CHAIRMAN: That is not a proper point of order. That is a matter which should be resolved in another way.

Inconsistency of Amendment With Prior Amendment Not Basis for Point of Order

§ 43.9 The test of germaneness of an amendment to a bill being read for amendment by titles is its relationship to

the title to which offered; even where the amendment would also have been germane to a previous title of a bill which has been passed in the reading, an amendment germane to the pending title is not subject to a point of order on the grounds that it indirectly affects, or is inconsistent with, an amendment adopted to a previous title.

The proceedings of Sept. 5, 1980, relating to H.R. 7235, the Rail Act of 1980, are discussed in Sec. 3.48, *supra*.

Conjecture as to Legislative or Administrative Actions That Might Be Necessitated by Amendment

§ 43.10 In ruling on a question of germaneness, the Chair confines his analysis to the text of the amendment and is not guided by conjecture as to other legislation or administrative actions which might—but are not required to—result from the amendment.

On July 27, 1977,⁽⁴⁾ it was held that to a title of a bill⁽⁵⁾ reported

4. 123 CONG. REC. 25249, 25252, 95th Cong. 1st Sess.

5. H.R. 7171, the Agriculture Act of 1977.

from the Committee on Agriculture providing for benefits under, and administration of, the food stamp program, an amendment which provided for recovery of benefits from persons whose income exceeded specified levels was germane, even though it required the Secretary of the Treasury and, impliedly, the Internal Revenue Service to collect any liability imposed by the amendment's provisions:

MR. [JAMES M.] JEFFORDS [of Vermont]: Mr. Chairman, I offer an amendment to the amendment.

The Clerk read as follows:

Amendment offered by Mr. Jeffords to the amendment offered by Mr. Foley: In title XII, page 28, insert after line 8 the following new section:

"RECOVERY OF BENEFITS WHERE INDIVIDUAL'S ADJUSTED GROSS INCOME FOR YEAR EXCEEDS TWICE POVERTY LEVEL

Sec. 1210(a)(1) if—

"(A) any individual receives food stamps during any calendar year and

"(B) such individual's adjusted gross income for such calendar year exceeds the exempt amount,

then such individual shall be liable to pay the United States the amount determined under subsection (b) with respect to such individual for such calendar year. Such amount shall be due and payable on April 15 of the succeeding calendar year and shall be collected in accordance with the procedures prescribed pursuant to subsection (g). . . .

"(g) The Secretary of the Treasury shall collect any liability imposed by

this section in accordance with regulations prescribed by him

"(h) Nothing in this section shall be construed to affect in any manner the application of any provision of the Internal Revenue Code of 1954." . . .⁽⁶⁾

MR. [FORTNEY H.] STARK [of California]: Mr. Chairman, I reserve a point of order. I would like to engage the author of the amendment in colloquy. . . .

Mr. Chairman, I would like to ask the distinguished gentleman from Vermont who or what branch of Government the gentleman feels would collect this money from the people?

MR. JEFFORDS: Under the amendment, the Department of the Treasury would be required to collect the money.

MR. STARK: It would be the Treasury Department and in no way did the gentleman intend that the Internal Revenue Service participate in any of the collection or in collecting the forms or collecting revenue?

MR. JEFFORDS: No, on the contrary, it is my understanding and belief that the Internal Revenue Service would be charged with and do the collecting. . . .

MR. STARK: Mr. Chairman, I make a point of order that the jurisdiction of the Internal Revenue Service lies wholly within the jurisdiction of the Committee on Ways and Means.

This amendment, as the gentleman has stated it, would be counting on the Internal Revenue Service to perform the functions as put down under this amendment. The amendment would

6. Shown is the correct text of the amendment offered, subsequently inserted in the Record by Mr. Jeffords.

not be in order and would not be within the jurisdiction of this committee. . . .

MR. JEFFORDS: . . . As I understand the rules here, I can ask for an amendment that can be proposed, as can anybody, to the collection. We could make the State Department or anyone else do the collection, but we cannot do what I have not done, and very specifically have not done in this amendment, which is to change any statute of the way it is done, which is under the jurisdiction of the Committee on Ways and Means. If I am wrong on this, there are so many places in this bill where the same thing is done that I do not know why a number of Members have not raised points of order.

We have asked the Postal Service to do something; we have asked the social security office to do things; we have mandated different agencies all over the place. We do not interfere with any statutes which are under committee jurisdiction of other committees. I have not done so here. The question is, do we change any statute which is under the jurisdiction of the Ways and Means Committee, and we do not. They are the guardian over those statutes, but they are not the guardian over any agency which happens to be involved with those statutes.

MR. STARK: Mr. Chairman, I think it is quite clear that the gentleman, in terms of both the committee report and in his response to questions here, in his statement on the floor that this amendment, although it really says that the Secretary of the Treasury shall collect any liability, clearly the intention is that the Internal Revenue Service shall collect W-2 forms, match them against income figures which are

now under the law not to be given even to the Secretary of Treasury, but are for collecting income tax and Internal Revenue matters.

Clearly, the intent of the amendment is to direct the Internal Revenue Service to participate in that. The jurisdiction of the Internal Revenue Service and all matters pertaining thereto is under the Committee on Ways and Means. I would ask that this amendment be ruled out of order on that basis.

THE CHAIRMAN:⁽⁷⁾ The Chair is ready to rule.

The gentleman from California makes the point of order that the amendment offered by the gentleman from Vermont (Mr. Jeffords) is not germane to the food stamp title of the pending bill. The thrust of the gentleman's point of order is that the collection procedure for overpayments of food stamp benefits to persons above the poverty level involves responsibilities of the Treasury Department, and in effect mandates the establishment of regulations which would involve the disclosure of tax returns and tax information and utilization of the Internal Revenue Service—all matters within the jurisdiction of the Committee on Ways and Means.

The Chair notes that the amendment does contain the provision that "nothing in this section shall be construed to affect in any manner the application of any provision of the Internal Revenue Code of 1954," and it seems to the Chair to follow that, under the explicit provisions of the amendment, Secretary of the Treasury would therefore have to establish an independent col-

7. Frank E. Evans (Colo.).

lection procedure separate and apart from the mandated use of the Internal Revenue Service. The Chair does not have to judge the germaneness of the amendment by contemplating possible future legislative actions of the Congress not mandated by the amendment.

In the opinion of the Chair, the authority of the Secretary of the Treasury under the rules of the House as collector of overpayments of any sort is not subject explicitly and exclusively within the jurisdiction of the Committee on Ways and Means under rule X, and even if this were true, committee jurisdiction is not an exclusive test of germaneness where, as here, the basic thrust of the amendment is to modify the food stamp program—a matter now before the Committee of the Whole.

The Chair overrules the point of order.

Parliamentarian's Note: Had the amendment altered the Internal Revenue Code or otherwise required the use of the Internal Revenue Service, in conjunction with the collection of federal income taxes, in recovering the value of benefits, the amendment would not have been germane. The Chair was persuaded that the Department of Treasury performs a variety of functions, including payments and collections, under laws and policies not within the jurisdiction of the Committee on Ways and Means. As indicated in the Chair's ruling, the amend-

ment disavowed any intent to affect any provision of the Internal Revenue Code.

Chair as Looking Behind Form of Amendment in Making Ruling

§ 43.11 Although the Chair will not ordinarily look behind the text of a bill and consider the probable effects of its provisions, or amendments thereto, in determining issues of germaneness,⁽⁸⁾ the Chair has ruled that an amendment which in form amounted to a permanent change in law could in fact be understood to be a temporary change in law, in light of its fundamental purpose demonstrated by prior legislative treatment of the subject in question (the statutory ceiling on public debt), and thus could properly be offered to a bill whose fundamental purpose was to provide a temporary increase in the statutory ceiling on the debt.⁽⁹⁾

8. See, generally, §46, *infra*; and see §§3.15 and 34.2, *supra*.

9. The proceedings of May 13, 1987, relating to H.R. 2360, extension of the public debt limit, are discussed in §46.7, *infra*.

Special Rule Permitting Amendments That Have Been Printed in Record

§ 43.12 Where a special rule permits the offering of only those germane amendments to a bill which have been printed in the Record, an amendment which differs in any respect from a printed amendment may not be offered (except by unanimous consent) even to cure a germaneness defect in a printed amendment previously ruled out.

During consideration of H.R. 8410⁽¹⁰⁾ in the Committee of the Whole on Oct. 5, 1977,⁽¹¹⁾ the Chair sustained a point of order against the following amendment under the circumstances described above:

MR. [JOHN M.] ASHBROOK [of Ohio]: Mr. Chairman, I offer an amendment. The Clerk read as follows:

Amendment offered by Mr. Ashbrook: Page 17, line 5, insert "(1)" after "(A)" and insert the following new subparagraph (ii) after line 15:

"(ii) which shall assure that the expressing of any views . . . opinion, or the making of any statement or the dissemination thereof . . . shall not constitute grounds for, or evi-

dence justifying, setting aside the results of any election conducted under section 9(c)(6) of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

THE CHAIRMAN:⁽¹²⁾ The Chair would like to inquire of the gentleman from Ohio (Mr. Ashbrook) if this amendment which was reported by the Clerk is printed in the Record?

MR. ASHBROOK: Mr. Chairman, I would say the amendment was printed in the Record. The Chair previously ruled it out of order and I have struck certain language to make it conform with the ruling of the Chair.

MR. [FRANK] THOMPSON [JR., of New Jersey]: Mr. Chairman, I make the point of order that the amendment was not printed in the Record, notwithstanding the attempt of my good friend to revise it in such a way as to indicate that it was. . . .

THE CHAIRMAN: The Chair would have to sustain the point of order. . . .

MR. ASHBROOK: Mr. Chairman, is the Chair indicating an amendment that was printed in the Record on Monday and ruled out of order for parliamentary reasons cannot be revised and offered as a substitute?

THE CHAIRMAN: The Chair would like to advise the gentleman that the amendment was not printed in the Record in the form in which the gentleman now presents it as an amendment to the bill.

MR. ASHBROOK: The gentleman from Ohio would concede that.

THE CHAIRMAN: And the Chair would be constrained to sustain the point of order.

§ 44. Timeliness of Point of Order

12. William H. Natcher (Ky.).

10. The Labor Reform Act of 1977.

11. 123 CONG. REC. 32510, 32511, 95th Cong. 1st Sess.